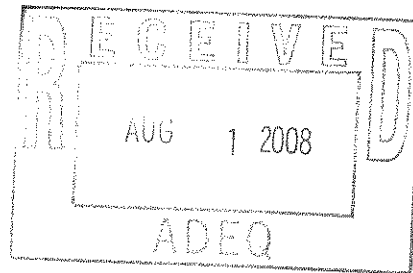


August 1, 2008

BY HAND DELIVERY

Ms. Martha Seaman
Environmental Rules Specialist
Waste Programs Division
Arizona Department of
Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007



Re: BHP Copper Comments on the Draft Solid Waste Rule Dated July 7, 2008

Dear Ms. Seaman:

BHP Copper Inc. ("BHP") provides these comments regarding the Arizona Department of Environmental Quality's ("ADEQ") redline draft solid waste rule dated July 7, 2008 ("Draft Rule"). BHP, through the Arizona Mining Association, submitted comments on an earlier version of the Draft Rule by letter dated February 15, 2008. In addition, BHP has been participating in ADEQ's stakeholder workshops on the Draft Rule.

1. BHP commends ADEQ's process for developing the Draft Rule.

Preliminarily, BHP commends ADEQ for the comprehensive stakeholder process that culminated in this Draft Rule, and, in particular, for undertaking a significant re-write of an earlier version. ADEQ's sincere engagement in the process has resulted in a solid waste rule that better serves stakeholders' interests and the environment.

2. The Draft Rule should be clarified to expressly exempt landfills already regulated pursuant to the Aquifer Protection Permit ("APP") program.

ADEQ has indicated that it intends for APP program-governed solid waste landfills to continue to be regulated under the APP program and to be exempted from the Draft Rules that concern non-municipal solid waste facilities. This has been ADEQ's position at

stakeholder meetings, in comments to BHP's counsel, and in ADEQ's notes from stakeholder meetings posted on ADEQ's web site. ADEQ's position reflects the statutory requirements that ADEQ's solid waste rules (i) avoid practices or requirements that duplicate, are inconsistent with or result in dual regulation with other applicable rules and laws; and (ii) not impose aquifer protection provisions on facilities already subject to regulation under the APP program. A.R.S. § 49-761(A) & (C). Unfortunately, the Draft Rule does not reflect this statutory directive and ADEQ's intent, so some clarification is in order.

The issue is particularly critical for mine sites operating pursuant to area-wide APPs or pending applications for area-wide APPs. To have to separate out landfills at the site from the other facilities covered by an area-wide APP would mean filing substantial yet duplicative information with ADEQ, and would lead to inefficiency and potential conflict by requiring regulated entities to deal with two separate ADEQ Divisions regarding the same issues at the same site. None of this additional complexity, burden and duplication would result in additional protection of human health or the environment.

For these reasons, BHP recommends that ADEQ revise Article 11 of the Draft Rule as follows:

PROPOSED REVISION TO ARTICLE 11

R18-13-1101(A) [new language underlined]

A. The owner or operator of the following solid waste facilities shall obtain approval of a solid waste facility plan in accordance with A.R.S §§ 49-762.03 and 49-762.04 and 1102, provided, however, that this requirement does not apply to (i) the owner or operator of a facility subject to an existing Aquifer Protection Permit, including with respect to the lateral expansion of that facility; (ii) the owner or operator of a facility subject to a pending application for an Aquifer Protection Permit submitted before the date that the owner or operator is required to submit a solid waste facility plan; or (iii) the owner or operator of a facility, including a new or laterally expanded facility, that is located within an area subject to an area-wide Aquifer Protection Permit:

- 3. The Draft Rule should be revised to reflect that the financial responsibility demonstration for an APP program landfill fully suffices for purposes of the solid waste rules.**

The Draft Rule requires APP program-regulated facilities with demonstrated financial competence for closure under the APP program, to "update that demonstration by submitting a financial responsibility plan that meets the requirements of this Article within 180 days of the effective date of this rule." Draft Rule R18-13-1802(H). But just as requiring APP program-regulated facilities to submit solid waste facility plans would be contrary to law, burdensome and duplicative, so too would be subjecting such facilities to the financial assurance requirements in the Draft Rule.

Most fundamentally, the law expressly bars the additional requirement. According to the solid waste statutes, a demonstration of financial responsibility made for a solid waste facility under the APP program “shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed” by the statutory section concerning financial assurance requirements for solid waste facilities. A.R.S. § 49-770(C). The “update” of a facility’s APP mechanism required in the Draft Rule, therefore, runs contrary to the statutory bar on requiring the production of something more than was demonstrated under the APP program.

In addition, requiring a separate solid waste financial assurance mechanism for a landfill within an area subject to an area-wide APP raises substantial practical issues that could be extraordinarily burdensome both for regulated entities and for ADEQ while providing no added environmental benefit. For example, the financial assurance mechanism for an area-wide APP typically reflects closure-related costs for the entire area. How is a mine to “update” this mechanism with respect to the landfill alone? Will the entire mechanism be subject to approval by the Waste Programs Division? Will the Division be compelled to assess the mine’s closure plans and costs for the entire area covered by the mechanism? Is ADEQ prepared to coordinate such review between the Waste Division and the APP Division? Moreover, such “update” of the financial assurance mechanism may qualify as an “other” amendment to the facility’s APP pursuant to R18-9-A211(D). Under APP program rules, an “other” modification requires public notice. R18-9-A211(E). A mine’s area-wide APP, therefore, could be subject to public notice every time the solid waste rules require an update to the financial assurance mechanism for a landfill within the area covered by the mine’s area-wide APP. Here again, the significant burden imposed by the new requirements would result in no additional protections to health or the environment.

For these reasons, BHP recommends that ADEQ revise Article 18 of the Draft Rule as follows:

PROPOSED REVISIONS TO ARTICLE 18

R18-13-1801 [new language underlined]

A. An owner or operator of a solid waste facility subject to the requirements in Article 11 and that is not a municipal solid waste landfill shall demonstrate

R18-13-1802

H. [delete in its entirety]

4. The Draft Rule includes an inappropriate definition of solid waste in the recycling context.

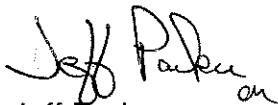
BHP understands that the scope of recycling under the Draft Rule is intended to be narrow and that on-site recycling activity is not intended to be regulated at all. However, given the general importance of recycling issues to the mining industry, BHP is concerned that there are provisions of the Draft Rule that appear designed to expand the scope of ADEQ's solid waste regulatory jurisdiction over recycling activities. BHP's specific concerns are as follows.

A. The definition of "recycling" in R18-13-101 of the Draft Rule appears to contemplate the possibility of regulation not just with respect to the recycling of "solid waste," but with respect to material that -- if it were not recycled -- "would otherwise become solid waste." ADEQ's solid waste regulatory jurisdiction is plainly limited to material that is solid waste even if it is recycled and BHP does not believe the definition of the term "recycling" should suggest otherwise. Because there appears to be no need for a definition of the term "recycling" that differs from the ordinary meaning of that term, BHP suggests that this definition be deleted.

B. R18-13-700.D.2 of the Draft Rule appears to provide a definition of "solid waste" that is specific to the recycling context. Unfortunately, the definition provided is not limited to discarded material, and is thus impermissibly broader than the statutory definition of solid waste provided in A.R.S. § 49-701.01. In fact, the definition of solid waste (i.e., "recyclable solid waste") in R10-13-700.D.2 of the Draft Rule provides an even broader definition of solid waste than the hazardous waste regulations provide, a result that would be absurd in application. For example, the Draft Rule would create a rule structure under which by-product material being reclaimed would be solid waste if it is non-hazardous, but would not be solid waste if it exhibits a hazardous characteristic (see 40 C.F.R. 261.2 Table 1). BHP urges ADEQ to delete this problematic definition from the draft rule.

BHP appreciates the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Parker" with a stylized flourish at the end.

Jeff Parker

Director, Environmental & Community Affairs